



**Service of Process  
Transmittal**

09/09/2015

CT Log Number 527787235

**TO:** David Z Carman  
ConsumerAffairs.com Holding, LLC  
1131 E 20th St  
Tulsa, OK 74120-7424

**RE: Process Served in Nevada**

**FOR:** ConsumerAffairs.com.Inc. (Domestic State: NV)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Consumer Cellular, Incorporated, etc., Pltf. vs. Consumeraffairs.Com, Inc., etc., et al., Dfts.

**DOCUMENT(S) SERVED:** Summons, Proof of Service, Complaint

**COURT/AGENCY:** Multnomah County Circuit Court, OR  
Case # 15CV22066

**NATURE OF ACTION:** Unlawful Trade Practices - Intentional Interference with Prospective Economic Relations - Defamation, Plaintiff alleges Defendants have made and continue to make false and defamatory representations regarding Plaintiff

**ON WHOM PROCESS WAS SERVED:** The Corporation Trust Company of Nevada, Carson City, NV

**DATE AND HOUR OF SERVICE:** By Process Server on 09/09/2015 at 11:30

**JURISDICTION SERVED :** Nevada

**APPEARANCE OR ANSWER DUE:** Within 30 days from the date of service of this Summons upon you

**ATTORNEY(S) / SENDER(S):** Thomas R. Rask, III  
Kell, Alterman & Runstein, L.L.P.  
520 SW Yamhill, Suite 600  
Portland, OR 97204  
503-222-3531

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day , 781303524023  
Email Notification, David Z Carman zac@consumeraffairs.com

**SIGNED:** The Corporation Trust Company of Nevada

**ADDRESS:** 701 S Carson St.  
Suite 200  
Carson City, NV 89701-5239

**TELEPHONE:** 314-863-5545

Page 1 of 1 / SW

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Exhibit 2, p. 1 of 31

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

CONSUMER CELLULAR, INCORPORATED, an Oregon corporation,

Plaintiff,

v.

CONSUMERAFFAIRS.COM, INC., a Nevada corporation;  
CONSUMERS UNIFIED, LLC, a Nevada limited liability company; and DAVID ZACHARY CARMAN,

Defendants.

Case No. 15CV22066

SUMMONS

TO: ConsumerAffairs.Com, Defendant  
c/o The Corporation Trust Company of Nevada, Registered Agent  
701 S. Carson St., Suite 200, Carson City, NV 89701

You are hereby required to appear and defend the Complaint filed against you in the above-entitled cause within thirty (30) days from the date of service of this Summons upon you, and in case of your failure to do so, for want thereof, Plaintiff will apply to the Court for the relief demanded in the Complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS  
CAREFULLY!

You must "appear" in this case or the other side will automatically. To "appear" you must file with the Court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court administrator within thirty (30) days along with the required filing fee. It must be in proper form and have proof of service on the Plaintiff's attorney or, if the Plaintiff does not have an attorney, proof of service upon the Plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636, or at <http://www.osbar.org/public/ris/ris.html#referral>.

SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

Thomas R. Rask, III 934031  
ATTORNEY'S/AUTHOR'S NAME BAR NO. (IF ANY)  
520 SW Yamhill St., Suite 600  
ADDRESS  
Portland OR 97204-1329 (503) 222-3531  
CITY STATE ZIP PHONE  
TRIAL ATTORNEY IF OTHER THAN ABOVE BAR NO.

STATE OF OREGON, County of Multnomah ) ss:

I, the undersigned attorney of record for the Plaintiff, certify that the foregoing is an exact and complete copy of the original Summons in the above-entitled action.

ATTORNEY OF RECORD FOR PLAINTIFF

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this Summons, together with a true copy of the Complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this Summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

ATTORNEY OF RECORD FOR PLAINTIFF

KELL, ALTERMAN & RUNSTEIN, L.L.P.  
ATTORNEYS AT LAW  
520 SW YAMHILL, SUITE 600  
PORTLAND, OR 97204  
TELEPHONE (503) 222-3531

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SUMMONS



## PROOF OF SERVICE

STATE OF \_\_\_\_\_, County of \_\_\_\_\_) ss.

I hereby certify that I made service of the foregoing summons upon the individuals and other legal entities to be served, named below, by delivering or leaving true copies of the summons and the complaint mentioned therein, certified to be such by the attorney for the plaintiff, as follows:

## Personal Service Upon Individual(s)

Upon \_\_\_\_\_, by delivering such true copy to \_\_\_\_\_, personally and in person, at \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.

Upon \_\_\_\_\_, by delivering such true copy to \_\_\_\_\_, personally and in person, at \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.

## Substituted Service Upon Individual(s)\*

Upon \_\_\_\_\_, by delivering such true copy at his/her dwelling house or usual place of abode, to-wit: \_\_\_\_\_, to \_\_\_\_\_, who is a person 14 years of age or older and a member of the household of the person served on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.

Upon \_\_\_\_\_, by delivering such true copy at his/her dwelling house or usual place of abode, to-wit: \_\_\_\_\_, to \_\_\_\_\_, who is a person 14 years of age or older and a member of the household of the person served on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.

## Office Service Upon Individual(s)\*

Upon \_\_\_\_\_, at the office which he/she maintains for the conduct of business at \_\_\_\_\_, by leaving such true copy with \_\_\_\_\_, the person who is apparently in charge, on \_\_\_\_\_, during normal working hours, at \_\_\_\_\_ o'clock, \_\_\_\_M.

## Mail Service Upon Individual(s)\*\*

Upon \_\_\_\_\_, by mailing such true copies to him/her by first class mail and ALSO by (check one): ☐ certified or registered mail with return receipt requested ☐ express mail.

## Service Upon Tenant(s) of a Mail Agent\*\*\*

Upon \_\_\_\_\_, by delivering such true copy to \_\_\_\_\_, a person apparently in charge of \_\_\_\_\_, which is the place where the mail agent receives mail for the tenant(s), its address being \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_M. Prior to effecting such service, I made diligent inquiry but could not find the tenant(s) so served.

## Service on Corporations, Limited Partnerships or Unincorporated Associations Subject to Suit Under a Common Name

Upon \_\_\_\_\_, by \_\_\_\_\_ (NAME OF CORPORATION, LIMITED PARTNERSHIP, ETC.)

(a) delivering such true copy, personally and in person, to \_\_\_\_\_ who is a/the \_\_\_\_\_ (Specify registered agent, officer (by title), director, general partner, managing agent, etc.) thereof; OR

(b) leaving such true copy with \_\_\_\_\_, the person who is apparently in charge of the office of \_\_\_\_\_, who is a/the \_\_\_\_\_ (Specify registered agent, officer (by title) director, general partner, managing agent, etc.) thereof;

at \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_M.

Dated \_\_\_\_\_

Sheriff

By \_\_\_\_\_

Deputy

I further certify that I am a competent person 18 years of age or older and a resident of the state of service or the State of Oregon, and that I am not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise; that the person, firm or corporation served by me is the identical person, firm or corporation named in the action.

Dated \_\_\_\_\_

SIGNATURE

TYPE OR PRINT NAME

ADDRESS

CITY STATE ZIP PHONE

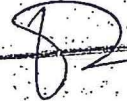
The signature lines on the left should be used only by an Oregon county sheriff or deputy. All other servers should complete the certification on the right. The Proof of Service above contains most, but not all, of the permissible methods of service. For example, this form does not include proof of service upon a minor or incompetent person. See ORCP 7 D for permissible service methods with respect to particular parties.

\*Where substituted or office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, a true copy of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time and place at which such service was made. Use S-N Form No. 1149, Notice of Substituted or Office Service, or the equivalent.

\*\*Service by mail may be made when required or allowed by ORCP 7 or by statute, except as otherwise permitted. If the summons and complaint are mailed, this certification may be made either by the person completing the mailing or by the attorney for any party, stating the circumstances of mailing and including the return receipt as an attachment. An attorney completing the mailing should delete "nor attorney for" from the last paragraph of this document. Failure to serve a summons in accordance with ORCP 7 and other applicable rules and statutes may affect or nullify the validity of such service.

\*\*\*Where service upon a tenant of a mail agent is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, true copies of the summons and the complaint to the defendant(s) at the address at which the mail agent receives mail for the defendant(s) and to any other mailing address of the defendant(s) then known to the plaintiff, together with a statement of the date, time, and place at which delivery was made.

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8/19/2015 4:16:41 PM  
15CV22066CERTIFIED TO BE A TRUE COPY  
BY IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAHCONSUMER CELLULAR, INCORPORATED,  
an Oregon corporation,

Plaintiff,

v.

CONSUMERAFFAIRS.COM, INC., a Nevada  
corporation; CONSUMERS UNIFIED, LLC, a  
Nevada limited liability company; and  
DAVID ZACHARY CARMAN,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT**(Oregon Unlawful Trade Practices;  
Intentional Interference with Prospective  
Economic Relations; Federal RICO; and  
Defamation)

Demand for Jury Trial

**NOT SUBJECT TO MANDATORY  
ARBITRATION**

Amount of Prayer: Exceeds \$5,230,072

Fee Authority: ORS 21.160(1)(d);

ORS 646.638(3); and 18 U.S.C. § 1964(c)

Plaintiff alleges:

**PRELIMINARY STATEMENT**

Plaintiff has been and continues to be damaged and harmed in its business and property by the Defendants' concerted scheme of deceptive exclusion of positive reviews from posting and/or overall star ratings on the "ConsumerAffairs.com" internet product review website related to Defendants, intentionally deceptive discriminatory treatment of posted reviews and ratings solely based on if fees have been paid, and publication of deceptively biased content about internet reviews and complaints pertaining to Plaintiff on the review page of ConsumerAffairs.com and to consumer internet search results about or which take migrate to Plaintiff. The purpose of this deceptive conduct is to negatively portray Plaintiff to potential and



1 existing customers for the purpose of harming Plaintiff to coerce Plaintiff and other brands to  
 2 pay large sums of money for membership and monthly fees for Defendants to repair the harm  
 3 they have done and to radically transform ratings reviews and image on ConsumerAffairs.com  
 4 (something already done for one paying competitor of Plaintiff to Plaintiff's disadvantage). The  
 5 claims herein are all based on extortionate actions by the Defendants and deceptive material  
 6 ratings and review related content devised and manipulated by Defendants, not the content of  
 7 specific review postings by individual reviewers on ConsumerAffairs.com. At all material times  
 8 described herein, Plaintiff's officers and employees who engaged in discussions with the  
 9 Defendants were located in Oregon.

## 10 PARTIES

### 11 2.

12 Founded in 1995 by two Oregonians, Plaintiff Consumer Cellular, Incorporated  
 13 (Consumer Cellular), is an Oregon corporation headquartered in Oregon. Consumer Cellular is a  
 14 mobile virtual network operator which uses AT&T Wireless and T-Mobile cellular networks to  
 15 provide cellphone service to nearly two million customers throughout the United States.  
 16 Consumer Cellular created a business model featuring no-contract, affordable pricing and a focus  
 17 on people over 50. Consumer Cellular partnered with AARP beginning in 2009 to offer wireless  
 18 service to the nearly 40 million AARP members throughout the country. This partnership began  
 19 after an extensive AARP review of Consumer Cellular business practices as well as ongoing  
 20 scrutiny to ensure that Consumer Cellular meets that high standard required by AARP as a well-  
 21 respected consumer advocate for all people 50 and over. Consumer Cellular partners with many  
 22 device manufacturers including Apple, Motorola, LG, Huawei and is the exclusive  
 23 U.S. distributor for Doro, an award-winning Swedish manufacturer who specializes in the  
 24 production of senior-specific mobile products. Consumer Cellular sells its phone service product  
 25 options on the internet, by phone, and in Sears and Target retail stores. Consumer Cellular  
 26

employees a service team in Oregon and Arizona of nearly 1,500 employees and has been honored with the following awards:

- Consumer Reports #1 reader-rated cell phone provider annually since 2011
- Nielson highest overall satisfaction rating of all wireless carriers in 2014 and 2015
- PC Magazine #1 rated mobile carrier in 2014 and 2015
- Inc. 5000 Fastest Growing Companies annually since 2009
- Portland Business Journal Fastest Growing 100 Private Companies since 2010
- Best Places to Work in Oregon annually since 2011
- Best Places to Work in Arizona 2015
- Oregon Business Magazine's 100 Best Green Companies 2011 – 2014.

3.

ConsumerAffairs.com, Incorporated (ConsumerAffairs) is a Nevada corporation. Consumers Unified, LLC (Consumers Unified) is a Nevada limited liability company. David Zachary Carman (Carman) is an individual who is the sole Manager of Consumers Unified and the President, sole Director, Secretary and Treasurer of ConsumerAffairs. The ConsumerAffairs business was originated by James Hood, a former journalist, in 1998. On information and belief, it was acquired by Carman in 2010. ConsumerAffairs purports to be an independent, trustworthy Web-based consumer news and resource center, which includes consumer news and recall information and hosts consumer review pages on numerous product brands, including Consumer Cellular. On public news information and belief, Carman established a new business model when he acquired the business, designed to try to convince brands included in its review pages to pay lucrative fees to become accredited members entitled to exclusive ConsumerAffairs ratings-related treatment and ratings image transformation services. Consumers Unified participates in those services which are listed in detail below and is the entity Carman uses to contract with and provide rating-related services to businesses which pay to become accredited members of ConsumerAffairs.com.

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Page 3 – COMPLAINT

00154020

KELL, ALTERMAN & RUNSTEIN, L.L.P.  
ATTORNEYS AT LAW  
520 SW YAMHILL, SUITE 600  
PORTLAND, OR 97204  
TELEPHONE (503) 222-3531  
FACSIMILE (503) 227-2980



## GENERAL ALLEGATIONS

4.

ConsumerAffairs not only hosts Web-based product or brand reviews, but it also publishes its own version of an "Overall Satisfaction Rating" based on an unspecified subset of star-rated reviews selected by ConsumerAffairs and a summary of star ratings 1-5 included in that subset. ConsumerAffairs also creates intentionally nuanced descriptions, designed to differentially influence and manipulate internet consumers. The heading on ConsumerAffairs.com internet review pages of paying members is "Reviews and Complaints" in contrast to "Complaints and Reviews" for non-paying members. A similar and even more misleading turn of phrase appears in search engine results listings when consumers do internet searches containing a brand name or for reviews of a brand name listed in the ConsumerAffairs review pages. If a brand has not paid to be an accredited member, the search engine result listing specifies "Top [number] Complaints and Reviews about [brand name]." If the brand has paid to be an accredited member, the search engine result listing specifies "Top [number] Reviews and Complaints about [brand name]." In each instance, an overall star rating is also depicted in the search engine listing. Additionally, ConsumerAffairs uses a deceptive biased and discriminatory practice when posting reviews and determining which will be included in the star ratings that is solely based on if a company has agreed to pay a monthly fee. Companies who agree to this fee can have reviewers update a star rating, have a star rating removed and the review text lined out if the consumer does not respond or the matter is addressed privately, or have a star rating removed and the review text lined out by claiming that the complaint is not factual. None of these options are available to companies who do not pay lucrative setup and monthly fees. ConsumerAffairs also actively solicits and posts numerous positive reviews for paying members. Only review pages of non-paying members contain a superimposed screen prompt on every page saying "Not Impressed With [brand]? Find a company you can trust." A link is then provided to "Compare Top Alternatives" which is connected to a page featuring a paying member at the top.

None of these things are readily ascertainable by online consumers looking for reviews without combing fine print scattered about other parts of a website and who are led to believe that ConsumerAffairs.com is an independent and trustworthy review site that can help them make an informed decision from reviews. Beyond these practices, as set forth below there is substantial evidence that ConsumerAffairs has also intentionally not posted and removed legitimate positive reviews to specifically lower the total star rating and damage Consumer Cellular and other nonpaying companies to coerce brands including Consumer Cellular to become lucrative fee-paying members.

5.

At all material times, Defendants benefitted and/or intended to benefit from the activities of ConsumerAffairs Sales Account Executive Andrew Polacek and other relevant employees of ConsumerAffairs known to Defendants in carrying out the scheme alleged herein. On August 19, 2014, Polacek began a series of "cold call" email solicitations to Consumer Cellular's marketing executive Brian Hepner with a subject line of "Consumer Cellular's Page on ConsumerAffairs – 14,000+ Unique Views in the last 30 days." The body of the August 10 email said:

My name is Andy Polacek and I am reaching out from ConsumerAffairs regarding Consumer Cellular's page on our site. The page ranks #2 in organic search for 'consumer cellular reviews' and saw over 14,000 unique views in the last 30 days. The page currently has 149 reviews and complaints that have not been addressed by the brand. The brand is currently being defined on the page by detractors in a highly visible way in organic search. Google autofills when one types in "consumer cellular reviews", telling us that prospective customers are looking for reviews on the brand before they buy. ConsumerAffairs is a 3rd party review site that partners with brands to 1) help them paint the full picture of customer experience in organic search by collecting reviews; 2) retain and regain customers by utilizing our backend; and 3) generate leads utilizing our high ranking brand pages in organic search. If you are interested in turning the page positive and transforming it into a positive branding message, a way to retain customers and generate new leads, I'd be happy to schedule a short 30 minute demo call to show you via screenshare how ConsumerAffairs partners with brands.



1 A computer screenshot was attached showing a computer page with data for the month tracked  
 2 by ConsumerAffairs on various types of potential customer views of the ConsumerAffairs  
 3 reviews page on Consumer Cellular.

4 6.

5 Not having received a response, Polacek again sent further "cold call" emails to Hepner  
 6 on September 2, and September 9, 2014, saying he was following up, asking about availability to  
 7 talk, and commenting on September 2 that "I'd imagine that with this large number of page views  
 8 that this would be something that Consumer Cellular would be interested in learning more  
 9 about?" On September 12, 2014 Consumer Cellular's Dominic Artero exchanged  
 10 correspondence with Polacek to schedule a telephone call on September 16, 2014.

11 7.

12 During that call Polacek went through demonstration materials and discussed among  
 13 other things how brands like Consumer Cellular can partner with ConsumerAffairs to transform  
 14 the negative sales impact of a bad ConsumerAffairs.com overall star distribution rating into a  
 15 positive (4 or 5 stars) overall rating by paying for (1) ConsumerAffairs to erase or raise negative  
 16 star ratings from posted reviews through methods of challenging or resolving reviews, and  
 17 (2) ConsumerAffairs' to actively solicit and post positive reviews to fill the ConsumerAffairs  
 18 reviews pages for Consumer Cellular with positive star ratings. The result would be that a  
 19 positive 4 or 5 star rating could appear on internet searches for "Consumer Cellular" and  
 20 "Consumer Cellular reviews."

21 8.

22 After that call, on October 7, 2014 Polacek emailed Artero an updated computer data  
 23 screenshot showing that unique views traffic was "continuing too trend upward" on the  
 24 ConsumerAffairs review page on Consumer Cellular, having increased to 18,200+ unique views  
 25 over the previous 30 days.

26 ///

9.

On October 10, Polacek emailed Artero a PowerPoint presentation customized for Consumer Cellular. In that email Polacek turned up the pressure, stating:

We did not include this in the presentation, but I believe you may want to highlight that with almost 18,000 uniques in 30 days (basically a month) at even a low conversion rate (and typically our brands, especially larger and better known brands like Consumer Cellular, convert at higher rates than on other sites as folks looking for reviews tend to be in the buying funnel) even a 2% conversion is going to be 360 leads, with even as small as 10% converting to sales and assuming that a customer is worth \$200 each to Consumer Cellular (what I believe to be a potentially conservative estimate), we are talking \$7,200 a month in customer lifetime revenue. Our conversion rates of leads and sales are typically much higher than that once we've turned the pages around to being net positive (more like 10% and 20%, respectively). I am sure you see the point .... there is potential here for this partnership to not only pay for itself but to turn this into a net profit engine for Consumer Cellular ... especially important as your brand profile with the Target rollout is about to increase significantly.

The PowerPoint presentation, among other things, included the following primary components. 87% of consumers research a company online before buying. 88% of consumers trust reviews. Computer screenshots were included showing that in Google searches for "Consumer Cellular" and "Consumer Cellular Reviews," the ConsumerAffairs listing of "Top 183 Complaints and Reviews about Consumer Cellular" depicting 2 red stars as an "Overall Distribution Rating" popped up third and fourth respectively in the Google listings. The high profile negative star rating was impacting Consumer Cellular. For fees of \$15,000 for "setup" and \$5,000 a month, with a minimal Consumer Cellular staff time involvement, the transformation described earlier of the Consumer Cellular negative star distribution rating into a financially rewarding strong positive rating could be done. A mock example of an "Overall Distribution Rating" for Consumer Cellular of 4 green stars and several mock-4 and 5-star reviews that could be created were included.

Page 7 – COMPLAINT

00154020

KELL, ALTERMAN & RUNSTEIN, L.L.P.  
ATTORNEYS AT LAW  
520 SW YAMHILL, SUITE 600  
PORTLAND, OR 97204  
TELEPHONE (503) 222-3531  
FACSIMILE (503) 227-2980



10.

In the course of these and some other communications with Polacek, the Consumer Cellular marketing department, feeling as if they had no choice, asked for materials necessary to go forward. They felt like they had no choice because of the negative posted review history, the impact of the lack of positive reviews and the bad overall star rating, and because ConsumerAffairs.com does not allow for non-paying brands to receive information about consumers who have posted reviews on their website in order to resolve complaints posted by those consumers and request that star rates be adjusted. Additionally, they were concerned that non-paying brands cannot have star ratings blocked if the consumer does not respond to a company's request for more information, the dispute is resolved privately or the factual basis for the complaint is not resolved. Polacek provided a form of "ConsumerAffairs Member Accreditation Agreement," with Consumers Unified as the contracting party from the ConsumerAffairs end. The terms of that form call for Consumers Unified (not ConsumerAffairs, Incorporated), defined in the contract form as "ConsumerAffairs" to provide, among other things, the ConsumerAffairs services described above that Polacek touted would transform Consumer Cellular's star-rating image.

11.

On information and belief, this form of contract is part of a new business model incorporated in the ConsumerAffairs business by Carman after he acquired ConsumerAffairs and formed Consumers United in 2010. The new business model is selling memberships to brands like Consumer Cellular to transform their review images. Carman has generally spoken about introducing this business model in an interview with a Tulsa, Oklahoma newspaper. As alleged herein, the negative manipulation and characterization of ratings by ConsumerAffairs is designed to coerce brands to pay the lucrative fees for ConsumerAffairs to transform their ConsumerAffairs ratings and images.

///

12.

Upon being informed of all of the circumstances, Consumer Cellular's CEO, John Marick, declined to enter the deal because he did not believe that the coercive practices of ConsumerAffairs were just. Upon being informed that Consumer Cellular had declined the membership contract, Polacek for the first time sent an email on November 18, 2014 directly to Marick questioning that decision and stating in part as follows:

Dominic Artero informed me of your decision not to move forward with a partnership with ConsumerAffairs. We'd love to understand why, as it seemed like a great fit, an opportunity for the brand to repair a currently negative sentiment in organic search for searches on both your brand name and for reviews on the brand (see screen shots below). The page gets enough views in a month to pay for the program itself and then some with even a low conversion to sales rate of 1% (see traffic below).

13.

In order to highlight the high profile negative impact on Consumer Cellular, Polacek attached to that email computer screenshots of (a) circled results of Google searches for "Consumer Cellular Reviews" and "Consumer Cellular" showing the ConsumerAffairs listing third and second respectively and each referencing "Top 181 Complaints and Reviews" and a (shrinking) 1 ½-star overall ConsumerAffairs rating; and (b) computer data analytics tracked by ConsumerAffairs on Consumer Cellular showing a jump to 23,890 unique consumer views in the previous 30 days.

14.

Consumer Cellular did not respond to that Polacek email. Undaunted, on February 18, 2015, Polacek appealed to Hepner in an email boldly commenting on the increasingly harmful impact that the ConsumerAffairs Overall Satisfaction Rating and the enhanced positioning of ConsumerAffairs in the search results listings:

Below is a quick update on Consumer Cellular's ConsumerAffairs page.



1 – Ranks #2 in organic search for "consumer cellular" keyword  
search terms.

2 – Ranks #1 in organic search for "consumer cellular reviews"  
keyword search term.

3 – 219 reviewers are rating the brand at 1.5 out of 5 stars.

4 – The page has seen over 22,000 unique views in the last 30 days,  
significantly higher than 14,000 unique views a month that was  
occurring last Fall.

5 – With star ratings visible in organic search on the search engine  
results page, any prospective customer that searches for reviews on  
Consumer Cellular sees the sentiment from reviewers on the  
brand's ConsumerAffairs page.

6 79% of consumers search for reviews online before they buy based  
on the most recent research and there is a disproportionate number  
of ConsumerAffairs readers that are older folks (re: your AARP  
partnership). We make the majority of our partner brands 3x or  
more what they pay us monthly. With 22k unique views, that  
would certainly be the case for Consumer Cellular with a  
transformed page representing your true customer experience, as  
opposed to the detractors defining your brand online right now on  
your brand's ConsumerAffairs page.

15.

16 Consumer Cellular's response has been to demand that ConsumerAffairs cease and desist  
17 from its deceptive and extortionate pattern and practices.

16.

18 As set forth in the paragraphs below, while relevant information is in the possession of  
19 the Defendants, the circumstances strongly indicate that the Defendants have for over a year  
20 intentionally almost entirely screened positive Consumer Cellular reviews from posting with the  
21 limited exception of the time when Consumer Cellular was talking with ConsumerAffairs about  
22 a possible deal.

17.

24 Between October 26, 2013 and April 15, 2014 ConsumerAffairs posted at least eight  
25 5-star customer reviews of Consumer Cellular, with three of them in March and April 2014.  
26

1 After April 15, 2014, in the months leading up to the series of Polacek cold-call emails beginning  
 2 August 19, 2014, ConsumerAffairs posted only one positive review, a 4-star review on July 14,  
 3 2014. By August 19, 2014, the starred overall rating showing on internet search engines and on  
 4 the ConsumerAffairs page for Consumer Cellular was just 2 stars, which also excluded some  
 5 positive ratings of 4 and 5 stars because ConsumerAffairs, without explanation on its website,  
 6 bases its "Overall Satisfaction Rating" on a subset of total star-rated reviews it has posted. The  
 7 lack of positive ratings postings by ConsumerAffairs in that April 15 to August 19, 2014 time  
 8 frame positioned ConsumerAffairs for the series of cold call emails by Polacek and subsequent  
 9 discussions between Polacek and Consumer Cellular.

10 18.

11 After Consumer Cellular responded with some interest to Polacek, and before Consumer  
 12 Cellular declined to pay ConsumerAffairs a setup fee of \$15,000 and \$5,000 a month for its  
 13 review page transformation services, ConsumerAffairs posted a 4-star review on September 13,  
 14 2014 and a 5-star review on October 1, 2014. In the ten and a half months since that time  
 15 Consumer Cellular has had a drought of positive reviews, with recent exceptions of a July 19  
 16 and 22, 2015 reviewer-revised original negative review which has since vanished from  
 17 ConsumerAffairs.com, and a 5-star anomalous posting on August 11, 2015 which remains posted  
 18 at this time.

19 19.

20 This 10-and-one-half-month positive review posting drought in the wake of Consumer  
 21 Cellular's rebuke of ConsumerAffairs pressure to pay for ratings and image transformation,  
 22 together with the ConsumerAffairs unexplained exclusion of almost all posted positive  
 23 Consumer Cellular reviews during that time, as of the time of filing of the Complaint, has  
 24 resulted in ConsumerAffairs representing a shrunken near 1-star "Overall Satisfaction Rating"  
 25 for Consumer Cellular "based on 165 ratings out of 313 reviews." As emphasized in  
 26 ConsumerAffairs last email to Consumer Cellular, a Google search for apparently any search



containing "Consumer Cellular" produces search results with ConsumerAffairs's listing immediately following Consumer Cellular's own web site listing as exemplified by the following screenshot from an August 11, 2015 Google search:

### Consumer Cellular - The Best No Contract Cell Phones and ...

<https://www.consumercellular.com/> ▾ Consumer Cellular ▾

Consumer Cellular provides the best no contract cell phones, smartphones, and cell phone plans available. Sign up today!

3 Google reviews · Write a review · Google+ page



7204 SW Durham Rd, Portland, OR 97224  
(888) 345-5509

#### My Account

My Account. Log in to manage your account, pay bills online, or ...

#### Support

Contact Us - Manuals & Videos - International Rates - ...

#### Cell Phone Plans

Consumer Cellular delivers the best no contract cell phone ...

#### Sign Up

Select a Talk Plan. Select the plan that best meets your needs. You ...

#### Phones

Motorola Moto G EXT - Motorola Moto E LTE - Motorola Moto G

#### Coverage Map

See where wireless talk and data coverage is provided in the ...

More results from consumercellular.com »

### Top 310 Complaints and Reviews about Consumer Cellular

[www.consumeraffairs.com](http://www.consumeraffairs.com) > Electronics > Cell Phones ▾

★☆☆☆☆ Rating: 1.2 - 164 votes

The saga continues with Consumer Cellular. Was able to get the correct sim card from Target last Monday 7/27. Thought all was ok and working. Used my phone ...

20.

That near 1-star overall rating is extraordinarily disparate from the 2014 Consumer Reports and Nielson number 1 ratings, the ConsumerAffairs review site competition, and even the suspect ConsumerAffairs review page history prior to April 16, 2014. As of August 18, 2014, Consumer Cellular held overall ratings of 4 stars by the Better Business Bureau, 3 stars by Prepaid Reviews, and 2-1/2 stars by CNET, Yelp and Pissedconsumer.com.

21.

Even more conclusive of this intentional exclusion of positive reviews by ConsumerAffairs are the following specific known exclusions:

a. In addition to its review postings, ConsumerAffairs publishes articles on what they call consumer issues. After Consumer Reports published its 2014 rankings of all cell phone service providers, one of the staff writers for ConsumerAffairs published an account of the results dated December 15, 2014 on the ConsumerAffairs website. In that account, the writer notes that Consumer Cellular came out on top and outperformed all of the traditional cell phone service providers. He included a link to and a verbatim quote of a fairly lengthy and very positive Consumer Cellular review that had been posted on the ConsumerAffairs.com review site by "James of Sacramento" who said in part "I have nothing but good things to say about Consumer Cellular." That link was subsequently redirected and that review is nowhere to be found on the ConsumerAffairs review site. Instead, the link is connected to the first page of the ConsumerAffairs review site for Consumer Cellular showing an ever-shrinking star Overall Satisfaction Rating. Another link to a negative review of cellular provider StraightTalk in the same article is still active and connected to that particular review.

b. Late in 2014, a Consumer Cellular customer by the name of Joe Monahan reached out on his own to Consumer Cellular to offer the Consumer team a pat on the back. Consumer Cellular asked if he would be willing to submit a review on the ConsumerAffairs.com website, providing a link. He responded that "I did send a very positive feedback to Consumer Affairs." ConsumerAffairs did not post his review. Based on customer feedback during the period in question, Consumer Cellular has good reason to believe other legitimate positive reviews have been submitted but have been excluded.

c. A negative review dated July 19, 2015 was posted. The reviewer later used the tools available on the website to update and increase the rating to 5 stars, causing the "Consumer Increased Rating!" notation to appear above the stars. Consumer Cellular happened to monitor



1 the review page on July 22, 2015, a time when that 5-star review was seen, much to Consumer  
2 Cellular's surprise. However ConsumerAffairs has since deleted the entire review.

3 22.

4 Defendants have engaged in and continue to engage in a scheme of misrepresentation and  
5 deception of the internet consumers who do internet searches which contain or take them to  
6 "Consumer Cellular" or "Consumer Cellular Reviews" either on a general search engine search  
7 or a search which takes them to the ConsumerAffairs website review page for Consumer Cellular  
8 as follows:

9 a. The top of the ConsumerAffairs.com internet review pages contain intentionally  
10 designed deceptively nuanced headings to differentially influence internet consumers. If a brand  
11 has not paid to be an accredited member, the heading reads "[Brand Name, e.g. Consumer  
12 Cellular] Consumer Complaints and Reviews." If a brand has paid to be an accredited member,  
13 the heading reads "[Brand Name, e.g. Jitterbug] Consumer Reviews and Complaints."

14 b. The "Overall Satisfaction Rating" posted on the ConsumerAffairs.com internet  
15 review site for Consumer Cellular and listed in search engine results which bring up Consumer  
16 Cellular has been and continues to be deceptively manipulated because of the exclusion of  
17 posting of positive reviews as described above without disclosing it to internet consumers. That  
18 is also contrary to the ConsumerAffairs statement "We publish both reviews and complaints" in  
19 response to the question "Aren't you being terribly unfair and one-sided? Where's the good  
20 news?" on its internet frequently asked questions page.

21 c. Paying members are enabled to have negative stars changed or removed and  
22 negative texts of reviews lined out as described in paragraph 4.

23 d. The starred Overall Satisfaction Rating published in the places described above is  
24 also deceptive because it is calculated by counting only a subset of total posted star-rated reviews  
25 without including most of the positive reviews contained in the postings and without explaining  
26 that there are other starred posted ratings that have not be counted. For example, the review page

1 on August 18, 2015 represented that the approximate 1-star Overall Satisfaction Rating is "Based  
 2 on 165 ratings out of 314 reviews," subjecting the reader to the impression that the other reviews  
 3 must not be star-rated. This is not only confusingly deceptive based on the wording, but the use  
 4 in fact of only a subset of star-rated reviews to calculate the overall rating is contrary to the  
 5 frequently asked questions page, which states that "A company's 'star rating' is calculated using  
 6 all ratings submitted by actual consumers."

7 e. In addition to the deceptive overall rating, the review page includes a deceptive  
 8 "rating distribution" showing the number of stars for each category on a 1-5 scale is based on a  
 9 relatively small subset of the total reviews posted, and nearly all of Consumer Cellular's positive  
 10 ratings contained in the universe of posted reviews are not counted in that ratings distribution.  
 11 For example, the August 18, 2015 review page shows two 5-star and one 4-star reviews in the  
 12 distribution ratings, subjecting the reader to the impression that there were only those two  
 13 positive reviews out of 314 reviews. Nowhere is there any explanation that there are other  
 14 positive reviews in the 314 reviews posting, and the consumer would have no way of figuring  
 15 that out short of carefully going through all 314 reviews, something no reasonable consumer  
 16 could be expected to do.

17 f. As described above, ConsumerAffairs.com also deceptively creates intentionally  
 18 nuanced descriptions, designed to differentially influence internet consumers, which appear in  
 19 search engine results listings when consumers do internet searches for either a brand name or for  
 20 reviews of a brand name listed in the ConsumerAffairs.com review pages. If a brand has not  
 21 paid to be an accredited member, the search engine result listing specifies "Top [number]  
 22 Complaints and Reviews about [brand name]" followed by the star rating. For example the  
 23 August 18, 2015 description for Consumer Cellular says "Top 313 Complaints and Reviews,"  
 24 followed by an approximate overall rating of 1 star and listing "Rating: 1.3 ÷ 165 votes  
 25 embodying a negative bias which subjects the reader to the wrong impression that there are 313  
 26 complaints and the confusion that only 165 of the complaints posted actually supplied a star



1 rating. If the brand has paid to be an accredited member, the search engine result listing  
 2 specifies "Top [number] Reviews and Complaints about [brand name]" followed by a  
 3 manipulated star rating that is artificially high, which creates an appearance that the stated  
 4 number applies to positive "top reviews." Defendants are well aware of the divergent impact of  
 5 this distinction or they would not have devised it. To exemplify this subtle but effective  
 6 intentionally biased deception, the following are separate August 11, 2015 screenshots of Google  
 7 search results listings for "Consumer Cellular" and "Jitterbug" (a Consumer Cellular competitor  
 8 which is a ConsumerAffairs paying member):

9 **Top 310 Complaints and Reviews about Consumer Cellular**

10 [www.consumeraffairs.com](http://www.consumeraffairs.com) > Electronics > Cell Phones ▾

11 ★☆☆☆☆ Rating: 1.2 - 164 votes

12 The saga continues with Consumer Cellular. Was able to get the correct sim card from  
 Target last Monday 7/27. Thought all was ok and working. Used my phone ...

13 **Top 270 Reviews and Complaints about Jitterbug | Page 2**

14 [www.consumeraffairs.com](http://www.consumeraffairs.com) > Electronics > Cell Phones ▾

15 ★★★★★ Rating: 4.6 - 190 votes

16 Apr 12, 2015 - We're happy with Jitterbug. It has been dependable each time I had to  
 use it. That's what I needed, something I could count on when I needed ...

17  
 18 g. As of the time of filing this Complaint, ConsumerAffairs.com had ratings pages  
 19 for 40 cellular phone product providers with just one brand, Jitterbug (also known as Great Call),  
 20 as a customer paying the lucrative membership fees. In addition to individual brand internet  
 21 review pages, all 40 are listed in summary fashion with overall star ratings on a single  
 22 ConsumerAffairs internet review page. At the time of filing of the Complaint, none of the non-  
 23 paying brands have an overall rating of 2 full stars. Most of the non-paying brands have an  
 24 overall rating of 1 star (or just barely over 1 star), like Consumer Cellular after its 10-month  
 25 drought of positive postings on ConsumerAffairs.com. Only Jitterbug had a positive overall  
 26 rating, which has grown to nearly 5 full stars since January, 2015, giving Jitterbug an

1 unexplained lopsided competitive advantage based on the Defendants' deceptive scheme as  
 2 follows:

3 i. Jitterbug became entitled to seemingly magical ratings transformation by  
 4 the Defendants late in 2014 by becoming the first and only cellular phone product  
 5 provider of the 40 noted above to succumb to ConsumerAffairs' extortionate ratings ploy  
 6 by paying for special privileges. It seems apparent from the Jitterbug review page that  
 7 between December 2006, when Jitterbug reviews began being posted on  
 8 ConsumerAffairs.com, and January 22, 2015, Jitterbug had never been awarded a  
 9 presently discernible positive 4 or 5 star rating by any reviews posted on the  
 10 ConsumerAffairs page for Jitterbug, except for a May 24, 2008 review which currently  
 11 shows 5-stars but inexplicably contains a very negative text ending in "Buyer  
 12 BEWARE!!". Reflecting the transformation of Jitterbug as a paying customer, the  
 13 ConsumerAffairs ratings page for Jitterbug has between January 22, 2015 and August 18,  
 14 2015 been transformed to an overall rating of nearly 5 full stars. During that approximate  
 15 8-month period (in which Consumer Cellular has had one positive (4 or 5 stars) review  
 16 and one 3-star review which remain posted, ConsumerAffairs.com shows just ten  
 17 negative posts of Jitterbug reviews, eight apparently negative reviews whose star ratings  
 18 have been removed based on privileged options made available to Jitterbug as a paying  
 19 member, ten 3-star reviews, and 165 positive (4 and 5 stars) reviews. During that same  
 20 period most star-ratings of negative reviews dating back to 2006 were expunged for one  
 21 stated reason or another (and some negative text reviews now show no star ratings even  
 22 though no explanation is provided). Though not readily discernible to online consumers  
 23 expecting ConsumerAffairs.com to be independent and trustworthy, this demonstrates  
 24 that a positive ratings transformation on ConsumerAffairs.com is only an expensive set of  
 25 membership and monthly fees away, and that the Defendants are by deceptive design  
 26

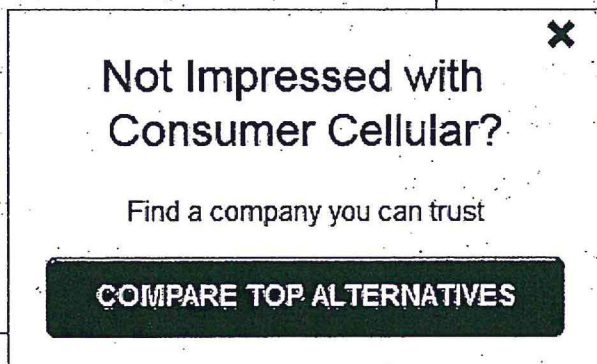


1 giving Jitterbug, for fees, a competitive ratings advantage over Consumer Cellular by  
2 deceptively inflating Jitterbug ratings and negatively deflating Consumer Cellular ratings.

3 ii. Another factor of deception involves how paying and non-paying  
4 members are treated concerning the order of posted reviews. For example, on August 18,  
5 2015, the most recent Jitterbug-posted reviews on ConsumerAffairs.com for the months  
6 of July and August of 2015 are dated August 11, July 24, July 8, and July 2. However,  
7 apparently because all four of those reviews were negative (although two of those have so  
8 far had their star ratings removed for disputed factual basis and "insufficient response"),  
9 Jitterbug's payment has resulted, without explanation to consumers, in those negative  
10 reviews being posted following three cherry-picked, out-of-chronological-order, 5-star  
11 reviews dated April 20, April 11, and February 14 of 2015 at the top of the first  
12 ConsumerAffairs.com ratings page for Jitterbug. That discriminatory deceptive  
13 reordering results in a consumer who is checking the ConsumerAffairs.com website  
14 ratings page on Jitterbug seeing three very positive 5-star reviews before seeing the most  
15 recent reviews which were all negatively starred to begin with and still show negative  
16 wording even though the negative star ratings have already been expunged from two of  
17 the last two-months four negative reviews. In addition, an internet search for  
18 ConsumerAffairs reviews for Jitterbug brings up a search result link that when clicked  
19 takes the consumer to the second more favorable appearing page (each review "page"  
20 containing 30 reviews) for Jitterbug containing thirty reviews from March 30 to April 12  
21 of 2015. Only one of those thirty reviews is negative, thus presenting a very positive  
22 page to the consumer. Only if the consumer scrolls to the bottom of those thirty reviews,  
23 will the consumer find a link to a "previous page" which is actually page 1 containing  
24 more recent and much less complimentary reviews as described above. Disparately, the  
25 ConsumerAffairs.com's ratings page postings for non-paying Consumer Cellular are  
26 always posted in chronological order beginning with the most recent reviews selected for

posting by ConsumerAffairs. Except for above-referenced two positive reviews deleted by ConsumerAffairs and the single anomalous positive review still retained, those reviews have always been negative throughout the last ten and a half months. (See paragraph 22.d for examples).

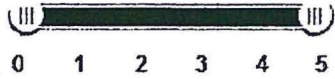
h. Recently, the ConsumerAffairs.com review page for Consumer Cellular, and other non-paying brands, has been even more brazenly designed to deceptively impugn and negatively impact Consumer Cellular and manipulate viewers in order to take business away from Consumer Cellular and actively direct consumers to Consumer Cellular's competitor Jitterbug. The new content serves to punish Consumer Cellular to incentivize paid membership, and to reward and retain Jitterbug as a paying member. Now constantly superimposed in the bottom right-hand corner of the screen on the ConsumerAffairs.com web review page for Consumer Cellular is a prompt that is plainly meant to impugn Consumer's Cellular's trustworthiness and direct consumers to Jitterbug:



That prompt does not appear on Jitterbug's page because it is a paying member. Clicking on "COMPARE TOP ALTERNATIVES" takes the consumer to the top of the above-described review page listing all cellular product providers tracked by ConsumerAffairs, where Jitterbug is prominently displayed with a nearly 5 full stars rating as the only positively rated cellular phone product provider. At the same time, on the top left of that web page there has been added the following coercive prompt for non-paying brands like Consumer Cellular:



## 1 Satisfaction Rating



4 Want your company to be  
5 on this guide?

6

7 Clicking on that link brings up a box for the brand to list its contact information for the purpose  
8 of being contacted by a ConsumerAffairs representative who will undoubtedly attempt to get the  
9 brand to become a paying member to avoid the negative impact of a contrived terrible overall  
10 rating and the above "not impressed?" / "find a company you can trust" prompt.

11 23.

12 Based on the circumstances set forth above, each of the Defendants have not only  
13 designed and carried out the above related schemes of deception and attempted extortion, but  
14 they have also agreed to those schemes, conspired to achieve them, and have materially aided  
15 and assisted them.

16 24.

17 The above alleged schemes of deceptive misrepresentation and attempted extortion have  
18 foreseeably, intentionally, substantially, directly, and proximately caused Consumer Cellular to  
19 be damaged and harmed in its business and property as follows:

20 a. Online Review Site Unique Views Sales Loss. Consumer Cellular has the ability  
21 to track its monthly internet sales conversion rate by tracking and comparing the number of  
22 monthly internet customer clicks on its website to monthly internet sales. For current damage  
23 calculation, Consumer Cellular has used its actual monthly click conversion rates between  
24 January 1, 2014 and July 15, 2014, which vary from a low of 1.69% to a high of 2.32%,  
25 comparable to the range spoken of by Polacek as described above. The internet consumer unique  
26 views which the ConsumerAffairs review page for Consumer Cellular gets can reasonably be

assumed to be potential customers as touted by ConsumerAffairs. Consistent with ConsumerAffairs' insistence on the negative impact on Consumer Cellular of the negative ratings and reviews because most consumers rely on them, it is reasonable to assume that consumers constituting unique views of the terrible ConsumerAffairs' ratings page for Consumer Cellular are dissuaded from becoming customers of Consumer Cellular. In its calculation of damages, Consumer Cellular has used the exact number of monthly unique views reported by ConsumerAffairs, trending upwards from September 14, 2014 through February 2015 as set out above. Consumer Cellular has reasonably and conservatively estimated the unique views from January 1, 2014 through July 2014, assuming 7,414 unique views in January 2014 trending upward to 14,000 as reported by ConsumerAffairs for August 2014. Consumer Cellular has conservatively estimated the unique views for December 2014, January 2015, and from March 2015 through July 2015 at 22,000 per month. Consumer Cellular's application of the actual Consumer Cellular click conversion rate to the actual and estimated ConsumerAffairs monthly unique views yields a total loss of at least 6,126 sales through July 2015. Based on Consumer Cellular's average revenue per customer per month for 2014 of \$27.32, and the average Consumer Cellular customer remaining a customer for 31.25 months, Consumer Cellular incurs a loss of \$853.75 per lost customer. That figure multiplied by the reasonably estimated loss of 6,126 customers from January 2014 through July 2015, equals a total Consumer Cellular loss of \$5,230,072. The actual loss online of customer sales are continuing due to the Defendants' ongoing scheme of deceiving internet consumers by intentionally harming Consumer Cellular's image and reputation. The total amount of these online sales loss damages will be computed at the time of trial based on actual Consumer monthly click conversion rates and actual ConsumerAffairs monthly unique views for the Consumer Cellular review page to be obtained from ConsumerAffairs which has access to that information.

b. Online Search Engine Results-Related Sales Loss. Plaintiff has been additionally damaged by the loss of sales to consumers whose internet search engine searches bring them to



Consumer Cellular in the search results listings, and are dissuaded from becoming Consumer Cellular customers because of the high profile juxtaposition of the listing in the search results of ConsumerAffairs.com's negative content on Consumer Cellular as noted by ConsumerAffairs in its attempt to coerce Plaintiff to pay the lucrative fees proposed by ConsumerAffairs and Consumers United. The amount of such damages will be computed at the time of trial using the same click conversion rates specified above.

c. Retail and Phone Sales Losses. As pointedly emphasized by Polacek, ConsumerAffairs' high profile negative ratings also negatively impact Consumer Cellular's retail and phone sales because as many as 89% of all consumer read internet products reviews before making a purchase online or otherwise. The amount of these losses will be proven at the time of trial.

#### FIRST CLAIM FOR RELIEF

(Unlawful Trade Practices Against All Defendants)

25.

Plaintiff realleges the allegations in paragraphs 1 to 24.

26.

Plaintiff is a person which has suffered and continues to suffer ascertainable losses of money as alleged in paragraph 24 as a substantial, direct and proximate result of the Defendants', and each of them, past and ongoing willful use or employment of a method, act or practice declared unlawful under ORS 646.608 as follows:

a. Under ORS 646.608 (1)(b) by causing likelihood of confusion or misunderstanding by consumers viewing the above-alleged ConsumerAffairs.com review-related representations about customer approval of the goods and services of Consumer Cellular, and its competitor Jitterbug; and/or

b. Under ORS 646.608 (1)(h) by disparaging the goods, services, and/or business of Consumer Cellular by false or misleading representations of fact described above.

27.

Defendants, and each of them, have also conspired together and aided and assisted one another in the commission of the unlawful trade practice alleged in paragraph 26.

28.

Plaintiff is entitled to damages as alleged in paragraph 24 and to reasonable attorney fees under ORS 646.638(1). Plaintiff reserves the right to move for allowance to allege punitive damages under ORS 646.638(1).

## SECOND CLAIM FOR RELIEF

(Intentional Interference with Prospective Economic Relations Against All Defendants)

29.

Plaintiff realleges the allegations in paragraphs 1 to 24.

30.

Plaintiff had and has a reasonable prospective economic relationship with potential consumers interested in the consumers which have clicked and continue to click on ConsumerAffairs review page for Consumer Cellular, as established by Consumer's online click conversion rate track record. The Defendants, and each of them, as third parties have interfered and continue to interfere with that prospective economic relationship by the improper means of misrepresentation and deception for the improper purpose of negatively impacting Plaintiffs' cellular phone service sales as set out above.

31.

Defendants, and each of them, have also conspired together and aided and assisted one another in the intentional interference.

32.

As alleged in paragraph 24, Plaintiff has been and continues to be damaged as a substantial, direct and proximate result of the Defendants, and each of them, having intentionally



interfered with those prospective economic relationships. Plaintiff reserves the right to move for allowance to allege punitive damages.

### THIRD CLAIM FOR RELIEF

(Federal RICO Against All Defendants)

33.

Plaintiff realleges the allegations in paragraphs 1 to 24.

34.

Pursuant to 18 U.S.C. § 1964(c), Plaintiff as a legal entity is a person which has been injured in its business or property by reason of a violation of 18 U.S.C. § 1962(c) and/or (d).

The Defendants, and each of them, are persons which have been associated with the following alternative enterprises:

- a. All Defendants in association with each other (as to the claims against all Defendants);
- b. All Defendants in association with each other and Polacek (as to the claims against all Defendants);
- c. ConsumerAffairs (as to the claims against Carman and Consumers United);
- d. Consumers United (as to the claims against Carman and ConsumerAffairs);
- e. ConsumerAffairs and Andrew Polacek (as to the claims against Carman and Consumers United);
- f. Consumers United and Andrew Polacek (as to the claims against all Defendants);
- g. ConsumerAffairs in association with the unwitting internet consumers which have been the object of the Defendants' deceptive scheme set out above (as to the claims against all Defendants);
- h. Consumers United in association with the unwitting internet consumers which have been the object of the Defendants' deceptive scheme set out above (as to the claims against all Defendants); and/or

1 i. ConsumerAffairs and Consumers United in association with the unwitting internet  
 2 consumers which have been the object of the Defendants' deceptive scheme set out above (as to  
 3 the claims against all Defendants).

4 35.

5 The activities of the above enterprises have affected interstate commerce between  
 6 Oregon, where Plaintiff and its officers and employees were located, and Tulsa Oklahoma where  
 7 the Defendants and Polacek were headquartered, and across the nation regarding thousands of  
 8 impacted online consumers.

9 36.

10 The Defendants, and each of them, conducted (operated and managed) the above  
 11 alternative enterprises' affairs through a pattern of racketeering activities. The racketeering  
 12 activities defined by 18 USC §1961 (1) (A) and (B) include:

13 a. The Defendants, and each of them, by design and through their agents for their  
 14 own benefit have repeatedly engaged in knowing participation in multiple predicate acts of  
 15 internet wire fraud in violation of 18 U.S.C. § 1343 by having devised or intending to devise the  
 16 above-alleged scheme or artifice to defraud, or for obtaining money by means of false or  
 17 fraudulent pretenses, representations as alleged in detail in paragraphs 1-24 above. Those  
 18 activities substantially involved and/or continue to involve use of interstate wires via the internet  
 19 for purposes of the email correspondence set out above, the ConsumerAffairs.com internet  
 20 review site set forth in detail in paragraphs 1-24 above as to Consumer Cellular and/or its  
 21 competitor Jitterbug, and ConsumerAffairs' positioning and word content for results of internet  
 22 consumers searches containing or migrating to "Consumer Cellular" or "Consumer Cellular  
 23 Reviews" and/or for "Jitterbug."

24 b. Defendants, and each of them, have also engaged in acts and/or threats  
 25 constituting racketeering activities involving conduct alleged in paragraphs 1 to 24 and 36.a  
 26 chargeable as multiple attempts at theft by extortion proscribed by ORS 161.405 (criminal



attempt involving a Class B felony) and ORS 164.075 (extortion, a Class B felony), punishable by 5 years' imprisonment under ORS 161.605. Defendants by design and through their agents for their own benefit have repeatedly taken substantial steps to compel or induce Consumer Cellular to deliver money to Consumers United for a ConsumerAffairs accredited membership by instilling in the Consumer Cellular a fear that, if the money is not so delivered, then ConsumerAffairs will:

- i. wrongfully cause damage to Consumer Cellular's property (goodwill, reputation, and monetary income) by continuing to manipulate the ConsumerAffairs review pages to negatively impact Consumer Cellular as alleged in paragraphs 1 to 24;
- ii. engage in conduct constituting the ongoing crime of federal wire fraud as alleged in paragraphs 1 to 24 and 36.a; and/or
- iii. expose Consumer Cellular to deceptive publication of facts tending to subject Consumer Cellular to contempt or ridicule as alleged in paragraphs 1 to 24.

37.

The multiple acts of mail and wire fraud constitute a pattern of racketeering in that the schemes involved and continue to involve repetitive acts of misrepresentation and deception as to both Consumer Cellular and its competitor Jitterbug published repeatedly (daily) to the thousands of unique view ConsumerAffairs.com internet review page consumers each month as tracked by ConsumerAffairs, and published repeatedly in internet search engine consumer search results involving Consumer Cellular and/or Jitterbug. Added to that pattern are the related above-alleged repeated attempts of unlawful extortion of Consumer Cellular under Oregon law. This pattern of racketeering has been continuous for well over a year and continues unabated.

38.

Defendants, and each of them, have agreed and conspired with one another and with Andrew Polacek as co-conspirator to violate 18 U.S.C. § 1962(c), as alleged above.

///

39.

As alleged in paragraph 24, Plaintiff has been and continues to be directly and proximately injured in its business and/or property by reason of the above-alleged pattern of predicate acts of racketeering. Plaintiff is entitled to treble damages and reasonable attorney fees under 18 U.S.C. § 1964(c).

## FOURTH CLAIM FOR RELIEF

(Defamation As to All Defendants)

40.

Plaintiff realleges the allegations in paragraphs 1 to 24.

41.

The Defendants have made and continue to make false and defamatory representations regarding Plaintiff as set forth in paragraphs 1-24 above. The defamatory statements have been and continue to be published to thousands of internet consumer who do internet searches for or that take them to "Consumer Cellular" or "Consumer Cellular Reviews" or who click on the ConsumerAffairs.com review page for Consumer Cellular.

42.

Defendants, and each of them, have also conspired together and materially aided and assisted one another in these past and ongoing defamatory statements.

43.

Plaintiff has been specially damaged by the false and defamatory statement publications as alleged in paragraph 24.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

(1) For monetary damages on all claims, to be proven at trial, but currently estimated at no less than \$5,230,072;



1 (2) For equitable relief as the court sees fit on Plaintiff's Unlawful Trade Practices  
 2 Act claim under ORS 646.638(1);  
 3 (3) For treble damages on the RICO claim pursuant to 18 U.S.C. § 1964(c);  
 4 (4) For reasonable attorney fees on Plaintiff's RICO claim under 18 U.S.C. § 1964(c),  
 5 and on Plaintiff's Unlawful Trade Practices Act claim under ORS 646.638(3);  
 6 (5) For costs and disbursements; and  
 7 (6) For such other relief as the Court deems just and equitable, including without  
 8 limitation that the Defendants cease their actionable practices and reserving the right to seek to  
 9 amend to allege punitive damages on Plaintiff's Unlawful Trade Practices Act claim under  
 10 ORS 646.638(1) and Plaintiff's claim for intentional interference with prospective economic  
 11 relations.

12 DATED this 19<sup>th</sup> day of August, 2015.

13 KELL, ALTERMAN & RUNSTEIN, L.L.P.

14  
 15 BY s/ Thomas R. Rask, III  
 16 Thomas R. Rask, III, OSB No. 934031  
 17 trask@kelrun.com  
 18 Robert B. Lowry, OSB No. 852751  
 19 rlowry@kelrun.com  
 20 520 SW Yamhill St., Suite 600  
 21 Portland, OR 97204-1329  
 22 Telephone: (503) 222-3531  
 23 Fax: (503) 227-2980  
 24 Of Attorneys for Consumer Cellular,  
 25 Incorporated

26 Trial Attorneys: Thomas R. Rask, III and  
 Robert B. Lowry